

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF REVENUE

In the Matter of the Revocation of the
Sales Tax Permit of:
Hildebrand's Midway of Fun, Inc.
P.O. Box 50332
Lighthouse Point, FL 33074-0332

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-captioned matter came on for hearing before Administrative Law Judge George A. Beck commencing at 9:30 a.m. on May 2, 2001.

Wayne L. Sather, Attorney, Minnesota Department of Revenue, Legal Services Division, Mail Station 2220, St. Paul, MN 55146-2220, appeared on behalf of the Minnesota Department of Revenue (Department). The Respondent did not appear. The record closed on the date of the hearing.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Revenue will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Matthew G. Smith, Commissioner, Minnesota Department of Revenue, 600 North Robert Street, St. Paul, MN 55146 to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether or not the Respondent has failed to pay sales taxes owed to the Department as required by law, thereby authorizing the revocation of the Respondent's sales tax permit.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Notice and Order for Hearing with respect to the Respondent was issued by the Minnesota Department of Revenue on March 23, 2001. In the Notice and Order for Hearing, the Department alleged that the Respondent has made taxable sales

as defined by Minn. Stat. §§ 297A.01 and 289A.11 and has failed to pay Minnesota sales tax as required by Minn. Stat. § 289A.20.

2. The Notice and Order for Hearing contained the following passage: **“SHOULD A PARTY FAIL TO APPEAR AT THE HEARING, THE ALLEGATIONS MADE IN THIS ORDER WILL BE TAKEN AS TRUE AND ISSUES SET OUT DEEMED PROVED.** If the allegations are taken as true or deemed proved, the Respondent’s sales and use tax permit will be revoked.” (Emphasis in original.)

3. The Notice and Order for Hearing was served on Hildebrand’s Midway of Fun, Inc., P.O. Box 50332, Lighthouse Point, Florida 33074-0332 by first class mail on March 23, 2001.

4. The Respondent failed to file a Notice of Appearance with the Office of Administrative Hearings, failed to appear on the scheduled hearing date, and did not make a prehearing request for a continuance or any other relief. The Respondent is, therefore, in default.

5. The allegations and issues set forth in the Notice and Order for Hearing are incorporated herein by reference in their entirety.

6. The Respondent makes taxable sales. By law the Respondent is required to collect and remit sales tax to the State of Minnesota.

7. The Respondent presently holds sales tax permit number 1735386.

8. As of the date of the hearing, the Respondent owed past due sales tax in the amount of \$109,893.91, plus a penalty of \$20,810.71 plus interest in the amount of \$38,239.66 or a total amount due and owing of \$169,094.28.^[1]

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Revenue and the Administrative Law Judge have authority to consider the issues set out in the Notice of and Order for Hearing and to take the action proposed under Minn. Stat. § § 297A.07, subd. 1 and 14.50, and Minn. Rule 8130.0900, 8130.7300 and 8130.7500.

2. The Department gave proper notice of the hearing in this matter to the Respondent and has complied with all relevant substantive and procedural requirements of law and rule.

3. The Respondent is in default under Minn. Rules pt. 1400.6000 as a result of his failure to appear at the hearing.

4. Under Minn. Rules pt. 1400.6000 the allegations of and the issues set out in the Notice and Order for Hearing may be taken as true or deemed proved without further evidence when a party defaults.

5. The Respondent has failed to pay sales taxes as required by Minn. Stat. § 289A.20 and Minn. Rules pt. 8130.7500.

6. As a result of the failure to pay sales taxes owed to the Department, including penalties, interest and other charges, reasonable cause exists to revoke the Respondent's sales tax permit under Minn. Stat. § 297A.07.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of Revenue revoke sales and use tax permit number 1735386 issued to Hildebrand's Midway of Fun, Inc.

Dated this 3rd day of May 2001.

GEORGE A. BECK
Administrative Law Judge

Reported: Default.

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

[N.B. Memorandum deleted from executed Recommendation]

MEMORANDUM

There were rides and excitement

all day and all night,
at Hildebrand's Midway of Fun

But if you don't pay
your sales tax accrued,
there's trouble that surely will come.

And when you don't show
you'll sure lose your license,
and your business will quickly be done.

So while exhibits and rides
remain at the fair,
there's no Hildebrand's Midway of Fun.

M.W.L.

^[1] Ex. 7.